

## **Summary of the Forgivable Loans Provisions of the CARES Act**

Like the Families First Coronavirus Response Act (“FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was put together quickly, partially by aggregating separate bills. Thus, like FFCRA, there are “divisions” to the CARES Act. The CARES Act was signed into law on March 27<sup>th</sup>. The first division is Division A, and it is the Keeping American Workers Paid and Employed Act. It allows small to mid-sized employers to receive SBA loans to operate, eight (8) weeks of operations’ cost of which can be forgiven. The longest loan term is 10 years; the highest rate is 4 percent.

Division A generally applies to employers with not greater than 500 part-time and full-time employees. It generally allows an eligible employer to receive a loan, for which complete tax-free forgiveness can be received for 8 weeks of payroll, utilities, rent and interest, if the employer takes the loan before June 30<sup>th</sup> and uses the funds before June 30<sup>th</sup> on payroll, utilities, rent and interest. The 500 figure can potentially be greater for certain industries, and for certain companies the 500 figure applies on a physical location (instead of total business) basis. Wages potentially eligible include tips equivalence, health care, paid leave, retirement contributions and state and local taxes on compensation. However, wages exclude FICA taxes, and are limited to an annualized amount of \$100,000 per employee. Amounts paid to independent contractors potentially qualify, up to \$100,000 in a year, as prorated for the covered period.

An eligible employer is one that certifies in good faith “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations” of the business. Section 1112 of the CARES Act provides it is the sense of Congress that “all borrowers are adversely affected by COVID-19.” The application must attest that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments. The maximum loan amount generally is the lesser of 2.5 times the average total monthly payroll costs for the year preceding the loan or \$10,000,000. Borrowers need not personally guarantee the loan or supply collateral. In evaluating eligibility for a loan, a lender (including banks that are authorized to administer the program for compensation) is required to consider whether the applicant was in business on February 20, 2020, had employees for whom it paid salaries and payroll taxes and whether it paid independent contractors, as reported on Form 1099-MISC.

The amount to be forgiven is reduced if the number of individuals employed is reduced. The amount forgiven is reduced by multiplying the total by the quotient produced by dividing the average full-time equivalent employees per month during the covered period by, at the election of the business, either (a) the average number of full-time equivalent employees for the period beginning on February 15, 2019 and ending on June 30, 2019, or (b) the average number of full-time equivalent employees employed beginning on January 1, 2020 and ending on February 29, 2020. Forgiveness is also reduced with respect to any employee who earned annualized pay of \$100,000 or less in 2019 (based on any 2019 pay period) and whose wages drop by more than 25 percent relative to the wages for the quarter immediately prior to the quarter in which the loan is received.

Self-employed persons, as defined under FFCRA, are eligible to receive loans. Under FFCRA, a self-employed person exists and is eligible for paid leave benefits if the person falls into one of the following six (6) different categories: (1) is subject to a government quarantine or isolation order due to Coronavirus; (2) has been advised by a health care professional to self-quarantine due to concerns related to the Coronavirus; (3) is experiencing symptoms of Coronavirus and is seeking medical diagnosis; (4) is caring for an individual who is subject to an order described in (1) or has been advised as described in (2); (5) is caring for a son or daughter (regardless of age) if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to the Coronavirus; or (6) is experiencing any other substantially similar condition specified by HHS. It is not clear how this provision applies to professional partnerships that have more than one self-employed person. It’s also not clear whether a pure sole proprietor would be eligible. However, the statute contemplates eligibility, at least if one of the six conditions exists.